

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ALBERT FORD,

Plaintiff,

v.

JAMES BENDER, et al.

Defendants.

Civil Action No. 07-11457-JGD

PLAINTIFF ALBERT FORD'S NOTICE OF AUTHORITY

During the May 4, 2009 status conference, counsel for the Department of Correction defendants raised the issue of whether the proper parties are before the Court to enable it to address Plaintiff Albert Ford's challenge to the constitutionality of Massachusetts General Laws ch. 276, § 52A. In response, counsel for Mr. Ford indicated that Massachusetts Attorney General Martha Coakley was served with notice of this challenge, but was unable to identify the Federal Rule of Civil Procedure pursuant to which such notice was served. Plaintiff Ford, by and through his attorneys, now respectfully brings to the Court's attention Federal Rule of Civil Procedure 5.1, which addresses the notice required when the constitutionality of statutes are challenged.

Federal Rule of Civil Procedure 5.1(a) requires a party challenging the constitutionality of a state statute to file notice on the state attorney general if "the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity." Rule 5.1(b) requires a court to certify constitutional challenges to a state statute to the state attorney general "under 28 U.S.C. § 2403." Section 2403 in turn requires a court to certify to the state attorney

general that the constitutionality of a statute is questioned only in actions “to which a State or any agency, officer, or employee thereof is not a party....”

In this case, the named defendants include the Massachusetts Department of Correction and Commissioner of Correction Harold Clarke along with Department of Correction employees James Bender, Peter St. Amand and Kenneth Nelson, all in their official capacities. (*See* docket no. 52 (Amended Complaint).) In addition, Plaintiff Ford served notice of his challenge to the constitutionality of § 52A on Massachusetts Attorney General Coakley on July 11, 2008 when he filed his Amended Complaint. (*See* docket no. 53 (notice to Attorney General Coakley enclosing a copy of the Amended Complaint).)

Respectfully submitted,
ALBERT FORD

By his attorneys,

/s/ Michael D. Hoke
Lisa J. Pirozzolo (BBO # 561922)
Timothy D. Syrett (BBO # 663676)
Michael D. Hoke (BBO # 670753)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Tel: (617) 526-6000
Fax: (617) 526-5000

Dated: May 14, 2009

CERTIFICATE OF SERVICE

I, Michael D. Hoke, hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic court filing (ECF) system, this 14th day of May, 2009.

/s/ Michael D. Hoke
Michael D. Hoke, BBO # 670753